IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-476

MICHIGAN OIL COMPANY, a Michigan Corporation,
Petitioner,

vs.

NATURAL RESOURCES COMMISSION and SUPERVISOR OF WELLS and PIGEON RIVER COUNTRY ASSOCIATION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF IN OPPOSITION

FRANK J. KELLEY
Attorney General for the
State of Michigan

Robert A. Derengoski
Solicitor General

Stewart H. Freeman
Thomas F. Schimpf
Assistant Attorneys General

Business Address:
The Law Building
525 West Ottawa
Lansing, MI 48913
(517) 373-1124

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OPINIONS BELOW

Respondents Natural Resources Commission and Supervisor of Wells accept Petitioner's statement of the opinions below.

JURISDICTION

Respondents Natural Resources Commission and Supervisor of Wells accept Petitioner's statement of jurisdiction.

QUESTIONS PRESENTED

Was Respondents Natural Resources Commission and Supervisor of Wells' denial of a drilling permit for Petitioner Michigan Oil Company an unconstitutional taking of the value of the lease in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States?

Was Respondents' denial of a drilling permit for Michigan Oil on Corwith 1-22 an unconstitutional impairment of contract?

Was Michigan Oil denied due process when the Natural Resources Commission ruled, as sustained by three appellate courts, that the unnecessary damage under the Michigan Oil Conservation Act indeed included damage to the environment?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondents Natural Resources Commission and Supervisor of Wells would not add to the constitutional provisions and statutes itemized in Michigan Oil's Petition and Appendix to Petition.

STATEMENT OF THE CASE

Michigan Oil fails to provide "[a] concise statement of the case containing the facts material to the consideration of the questions presented." Supreme Court Rule 23(1) (c). The "concise statement" contains only facts possibly favorable, or imposing the least damage, to Michigan Oil's Petition.[1].

[1] More than 4 pages of Michigan Oil's statement is a recitation of the findings of the hearings examiner favorable to Michigan Oil. (App A, A5).

The operative facts in this cause as found by the Michigan Supreme Court are:

> **"Background**
>
> Corwith, 1-22, the 40-acre site involved in the instant controversy, is located in the Pigeon River Country State Forest (hereinafter the Pigeon River Forest or Forest) which consists of 92,872 acres of rolling hills, deep swamps, high forests, lakes and streams. Located in Otsego and Cheboygan Counties, the Pigeon River Forest is one of the largest remaining tracts of publicly owned, wild, undeveloped land in the lower peninsula. Two of the state's highest quality trout streams, the Pigeon and Black Rivers, flow through the Forest. The Pigeon River Forest provides one of the few remaining favorable habitats in the lower peninsula for wildlife, including bear, bobcat, beaver, woodcock, osprey, eagle, and many other birds and animals.
>
> The Forest is also the home of the largest remaining elk herd east of the Mississippi River. In fact, Section 22, containing Corwith 1-22, is in the heart of a 25-square-mile area of semi-wilderness which is the favored habitat of the elk harem.
>
> Another natural resource, oil, one which provides great opportunity for profit, has also been found in the Forest. Thus, in 1968, when the Department of Natural Resources (DNR) sold oil and gas leases covering more than one-half million acres of state-owned land in the northern lower peninsula, it is not surprising that more than 10% or 57,669 of those acres were located in the Pigeon River Forest. As a consequence, more than one-half of this special Forest was leased for gas and oil development. Prior to the sale of the leases, no environmental assessment was made of the property to be leased. In fact, the

regional office of the DNR was given only nine days to review the almost 60,000 acres prior to the proposed sale. The DNR received $1,122,788 from the 1968 auction of oil and gas leases, or an average of $2.06 an acre.

The first permit to drill on state-owned land in the Pigeon River Forest, pursuant to a 1968 lease, was issued in May of 1970. On September 16, 1970, after only two drilling permits had been issued, Governor William G. Milliken urged the NRC [the Michigan Natural Resources Commission] to establish a moratorium on the issuance of drilling permits for state land . . . Subsequent to the moratorium, drilling permits were granted for state-owned land only in areas already damaged by oil development. During and subsequent to the moratorium, permits were issued for drilling on private land. Nevertheless, no drilling permit was issued within the 25-square-mile area surrounding Corwith 1-22, the proposed drilling site involved in the present controversy.

Corwith 1-22

State of Michigan Oil and Gas Lease No. 9656, covering 1,760 acres of Corwith Township including the 160 acres comprising the southeast 1/4 of Section 22 was purchased by Pan American Petroleum Corporation. In December of 1968, Pan American assigned an undivided 50% interest in this lease to Northern Michigan Exploration Company and Amoco Production Company. In April of 1971, Northern Michigan Exploration and Amoco applied for a permit to drill a well on the southwest 1/4 of the southeast 1/4 of Section 22 of Corwith Township, a 40-acre site. On October 11, 1971, the Supervisor of Wells denied the application on the grounds that oil and gas drilling on the site would cause 'serious and unnecessary damage' to various wildlife in the area, the swamp in the area would

be affected, and the drilling would cause a 'serious intrusion into a nearly solid block of semi-wilderness area of state lands'. The denial specifically stated that *no* site in the 40 acres was acceptable. No appeal was made from this permit denial.

With full knowledge of this denial, because of his membership on the Oil and Gas Advisory Board of the Supervisor of Wells, Vance W. Orr, Vice President of McClure Oil Company and President of Michigan Oil Company, accepted on behalf of McClure Oil an assignment of the lease rights to this 40-acre site in Section 22 of Corwith Township. 'For and in consideration of the sum of One Dollar ($1.00) • • • and other valuable considerations,' Northern Michigan Exploration and Amoco assigned to McClure Oil Company their interest in Lease No. 9656 covering the 40-acre site in Section 22. Four months later, in May of 1972, McClure Oil entered into a contract with its wholly-owned subsidiary, Michigan Oil Company. Under the terms of the contract, Michigan Oil would receive assignment of the leasehold interest, if Michigan Oil could obtain a drilling permit and then drill a commercial producing well on the 40-acre site referred to as Corwith 1-22.

The Drilling Permit

Within two weeks of the contract agreement, Michigan Oil filed the second application for a permit to drill a well on Corwith 1-22. This second application was also denied by the Supervisor of Wells, in a letter dated July 21, 1972 . . .

With nothing to lose and everything to gain, Michigan Oil, the potential assignee of McClure Oil's leasehold interest, appealed the denial of its permit application to

the NRC. The NRC appointed a hearing examiner to conduct the administrative hearing. The Pigeon River Country Association intervened under the Michigan Environmental Protection Act (MEPA), MCL 691.1205(1); MSA 14.528(205)(1). The hearing examiner ruled, however, that the intervention was untimely and that the environmental protection act could not be raised. The examiner further ruled that the parties were limited to issues raised by the initial parties in their pretrial statements.

The hearing examiner filed a written report, adopting almost verbatim Michigan Oil's proposed findings of fact and conclusions of law, recommending that the drilling permit be issued. The NRC, after reviewing the record, the briefs and the proposed findings of fact, rejected the recommendations of the hearing examiner and upheld the denial of Michigan Oil's application for a drilling permit. On May 9, 1974, the NRC issued its decision specifically finding the following:

'Damage to the ecosystem and *serious or unnecessary damage to animals would be caused* by opening entrance roads, truck traffic, succession of wells and general activities encountered in all oil-gas production. Particularly, serious effects would be caused to elk, bear and bobcat and could cause their virtual removal from a portion of the Pigeon River area. The tendency of the animals would be to avoid the area. Such effect would be particularly noticeable in the case of elk who are a wide ranging animal (Moran, T-2142; Harger, T-2243; Black, T-1331, 1332, 1333, 1352; Moore, T-1710; Johnson, T-1782, 1784-1786, 1819, 1924; Strong, T-1823, 1824).

'The Pigeon River area is the last stronghold of the bear and bobcat. Places where bear and bobcat can live are limited. Section 22 is good bear habitat (Johnson, T-1786, 1823; Harger, T-2246).

'Elk would be particularly affected by an oil operation because of their fragile nervous system and even clearing one acre will affect them. In turn, many small animals would be affected (Johnson, T-1823; Strong, T-1888, 1889; Moran, T-2152).

'The above testimony from game biologists as to the effect of the drilling of a well in this area comes from the DNR presentation and the opinions of their experts are unrebutted on the record. On considering the foregoing testimony the Commission must find that damage to or *destruction of the* surface, soils, *animals,* fish or aquatic life *will occur.'* (Emphasis added.)

On appeal, the denial of the drilling permit for Corwith 1-22 was affirmed by the Ingham Circuit Court and by the Court of Appeals. *Michigan Oil Co* v *Natural Resources Comm,* 71 Mich App 667; 249 NW2d 135 (1976)." (App A, A1-6).

REASONS FOR DENYING THE WRIT

In its Petition, Michigan Oil attempts to transform what were, before the Michigan Courts, back-of-the-brief constitutional arguments into matters of such great federal significance that this Court must intervene. This dispute, however, has been, and remains today, a question of state law.

Three members of the majority in the Michigan Supreme Court concluded that both the Michigan Oil Conservation Act and the Natural Resources Department Act provided the Michigan Natural Resources Commission, based on the facts

in this cause, sufficient statutory grounds to deny Michigan Oil's application to drill on Corwith 1-22.[2] The fourth Justice of the majority concluded that the Michigan Oil Conservation Act, by itself, provided sufficient statutory grounds for the denial of the Application to Drill:

> "I cannot subscribe to a construction of the Oil Conservation Act which would limit the DNR's duty to protect the whole environment as it is affected by the drilling of oil wells.
>
> There is adequate evidentiary support for the Commission's determination that drilling the proposed well would result in damage to animal life.
>
> Its conclusion that this amounts to waste included in the proscription of the statute comports with my understanding of the legislative intent in writing this law. While it is true the express, primary concern of the Oil Conservation Act is with the prevention of waste of oil itself, I cannot read the Act as ignoring, let alone approving, all incidental damage to other natural resources." (App R p 1).[3]

The dissent concluded that the Michigan Oil Conservation Act and the Natural Resources Department Act did not justify denial of a permit in the present case. None of the dissenters

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[2]

Michigan Oil Conservation Act, 1939 PA 61, MCL 319.1 *et seq;* MSA 13.139(1) *et seq.* Natural Resources Department Act, 1921 PA 17, MCL 299.1 *et seq;* MSA 13.1 *et seq.*

[3]

Justice Kavanagh's opinion does not appear in Petitioner's Appendix. The full text of Justice Kavanagh's opinion does appear in Appendix R, following this Brief.

would, however, have directed the issuance of a drilling permit to Michigan Oil. Two would have remanded the matter back to the Natural Resources Commission for hearing under the Michigan Environmental Protection Act (MEPA). The third Justice would have remanded to the circuit court for procedings under MEPA.[4]

The Natural Resources Commission, the Ingham Circuit Court, the Michigan Court of Appeals and the Michigan Supreme Court found that the Application to Drill on Corwith 1-22 within the Pigeon River Country State Forest was properly denied under the Michigan Oil Conservation Act and the Natural Resources Department Act. That was the arena of dispute. The Supreme Court will not, of course, review a state court judgment based upon an adequate and independent state ground. *Herb* v *Pitcairn*, 324 US 117 (1945).

A. The Denial of Michigan Oil's Application to Drill Involved No Unconstitutional Taking of Property.

Petitioner charges:

> "It [the state] purports to have eliminated every right Petitioner ever had in the lease and has done so totally

---

[4]

In the related *West Michigan Environmental Action Council* v *Natural Resources Commission*, 405 Mich 741, 760; 275 NW2d 538, 545 (1979), the Supreme Court ruled, based upon MEPA that:

> "In light of the limited number of the elk, the unique nature and location of this herd, and the apparently serious and lasting, though unquantifiable, damage that will result to the herd from the drilling of the ten exploratory wells, we conclude that defendants' conduct constitutes an impairment or destruction of a natural resource.
>
> Accordingly, we reverse and remand to the trial court for entry of a permanent injunction prohibiting the drilling of the ten exploratory wells pursuant to permits issued on August 24, 1977."

apart from any eminent domain proceedings. If there ever was a total taking without compensation, this is such a case." Petition, p 13.

The Michigan Court of Appeals found this argument wanting:

> "It would appear to be clear and undisputed that the fact that appellant's property interest was in the first instance derived from a contract with the state does not and could not thereby exempt that property interest from the proper exercise of the state's police power. . . .
>
> Also undisputed, and of significance in determining whether some property right obtained by appellant pursuant to the Oil and Gas Lease in question has been 'taken', is the fact that the lease was expressly made subject to 'rules and regulations of the Department of Conservation now or hereafter in force'. The sole restriction which the lease purported to make on the Commission's control of the property was that rules and regulations made after the approval of the lease could not affect the 'term of lease, rate of royalty, rental, or acreage', none of which restrictions are relevant to the instant case. . . .
>
> Clearly the lease does not guarantee that the lessee will be permitted to drill for oil. The Commission expressly retained its statutory authority to fulfill its duty to the people of the state of Michigan by regulating the use of state lands and resources placed in its control and held by them as a public trust. . . ." (App A, A67-68).

In addition to the fact that the lease was unequivocally "subject to the rules and regulations of the Department of Conservation now or hereafter in force," it is undisputed that

the lease did not waive the statutory requirement that Michigan Oil obtain a state permit to drill. (App A, A186). The Court of Appeals concluded:

> "Since the Commission thus retained its authority to prevent 'molestation, spoliation [or] destruction' of the property in question, as well as to prevent 'waste' in the production of oil and gas on that property . . . a proper exercise of that authority could not result in a taking in the constitutional sense." (App a, A68).

Michigan Oil, when it obtained the 1968 lease from Northern Michigan Exploration and Amoco Oil, received the exclusive opportunity to drill for oil and gas on Corwith 1-22. The state could not allow anyone else to drill for oil and gas on Corwith 1-22 for the term of the lease. The state, however, retained its full regulatory powers. Michigan Oil was free from competition, not regulation.

In its Petition, Michigan Oil cites cases for the proposition that Government may not take private property without compensation. Petitioner cites, for example, *United States* v *Causby*, 328 US 256 (1946). Causby's peaceful occupation of 2.8 acres with residence and chicken farm was destroyed, when the United States began using an adjacent airport for heavy bombers and other military planes. The Court ruled that the heavy flow of planes just above Causby's property constituted an easement and held the Federal Government liable for inverse condemnation. Also cited by Petitioner is *Pennsylvania Coal Co* v *Mahon*, 260 US 393 (1922). In its deed to the surface property owner, Pennsylvania Coal reserved the right to remove all of the coal underlying the property. The surface owner specifically waived all claims for damages that might arise from mining the coal. A state law was subsequently enacted, prohibiting the mining of coal in such a way as to cause subsidence to homes. On suit by the private homeowner

to prevent the mining of coal under his property, the Court found an unconstitutional taking of property, since the law rendered mining for coal under Mahon's property impossible.

In each instance, subsequent government action took away existent property rights: Causby's peaceful occupation of his property and chicken farm and Pennsylvania Coal's specifically retained right to mine the coal underlying the property deeded Mahon. In contrast, Michigan Oil's lease for Corwith 1-22 "was expressly made subject to 'rules and regulations of the Department of Conservation now or hereafter in force'" and, from its very birth, was tied to the Commission's statutory duty to regulate state lands.[5] No property interest was taken from Michigan Oil when the Natural Resources Commission met its retained statutory duty to regulate and preserve the large block of undeveloped state lands and the declining habitat of wild elk, bobcat and bear.

B. The Denial of Michigan Oil's Application to Drill Within the Pigeon River Country State Forest Did Not Violate the Equal Protection Clause of the Fourteenth Amendment.

Michigan Oil admits:

> "We have not found any equal protection cases paralleling the situation of Michigan Oil Company." Petition, p 20.

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[5]

This distinguishes Michigan's Oil lease from that considered in *Union Oil Co* v *Morton*, 512 F2d 743 (CA9, 1975). In Union Oil the government had yielded any right to the subsequent regulation of oil and gas developers:

> "The structure of the Act demonstrates that Congress intended vested rights under the lease to be invunerable to defeasance by subsequently issued regulations." *Union Oil*, 512 F2d at 750.

Respondents are not surprised. The Ingham Circuit Court found:

> "Petitioners apparently contend that the denial of a permit is a denial of equal protection principally for two reasons.
>
> First, a well has been approved as near as two and one-half miles from the proposed site. Petitioners point out that one of the DNR staff members testified that the proposed site and the site two and one-half miles away were 'similar' (Tr 2019) and that he had recommended approval of the other site (Tr. 2019). This standing alone would not be a sufficient showing of arbitrariness to constitute a denial of equal protection. In light of the same staff member going on to explain that shortly after the granting of the other site there was a moratorium and then a change in policy and further that in regards to the other site was only permitted to consider damage to timber and road access (Tr. 2029) where he now, in conjunction with fishery and game biologists, is allowed to consider the entire ecostructure, and finally that the fisheries biologist and game biologist did not recommend approval of the other site, petitioners fall short of their burden.
>
> Secondly, petitioners perceive a denial of equal protection in the now abandoned policy of the DNR that permitted ownership of land to be considered in the granting of a permit. Apparently the prior policy was to place greater restrictions or higher burdens upon those who drilled upon publicly owned land than those who drilled on privately owned land.
>
> . . . a nonarbitrary reason for such a policy seems readily apparent to the Court. Just as persons who own

land privately must look after their own remainder interest, so must the state concern itself with the remainder interest of Michigan's citizens. This duty would be present even absent the ecologically based considerations in determining waste." (App A, A98-99).

The Michigan Court of Appeals concurred, adding:

"Thus, while drilling permits have been granted in the immediate area surrounding Corwith [actually Charlton] 1-4 and in the immediate areas would not cause additional encroachments into previously undisturbed areas or necessarily cause any further disruption of wildlife living habits in those areas. On the other hand, no permits have been issued for any of the land in the 25-square-mile area surrounding proposed Corwith 1-22, indicating that denial of the instant permit was based on a plan having a rational foundation promoting a legitimate state purpose and therefore constituting no denial of equal protection to appellant." (App A, A73).[6]

Michigan Oil uses a new diagram, which appears for the first time in its Petition, to substantiate its equal protection claim.[7] If anything, however, the map belies Petitioner's claim. A large expanse of land does indeed separate Corwith 1-22 from the permitted well sites.

Even more telling are the facts omitted from Michgan Oil's "diagram." All of the wells cited by Michigan Oil were either in the immediate area surrounding Charlton 1-4, in the immediate area of other wells already drilled before the first application to drill on Corwith 1-22 or on private land based upon the abandoned, by 1972, policy of the DNR that allowed lesser restrictions on those who drilled on privately owned land versus publicly owned land. (App A, A73, A98). Petitioner Michigan Oil ignores these operative facts.

The crux of Michigan Oil's equal protection argument is, in actuality, that the state may never alter its policies. Once a step is taken, Michigan Oil argues that no matter what truths we learn, no matter what impacts are discovered and no matter how society may reassess its values, the state may never alter a policy. The Court of Appeals commented:

"The constitutional guarantee of equal protection of the laws certainly does not mean that a state agency, upon discovering that a former policy was an error, must nevertheless continue to pursue that dangerous policy to the point of destruction." (App A, A72).

C. The Denial of a Drilling Permit for Michigan Oil on Corwith 1-22 Is Not, In Any Manner, An Unconstitutional Impairment of Contract.

Michigan Oil next claims that Respondents have violated US Const, art 1, §10, which provides:

"No State shall . . . pass any . . . law impairing the obligation of Contracts. . . ."

We are not, however, directed to any law of the State of Michigan which unconstitutionally impairs Michigan Oil's "contract" to drill on Corwith 1-22. We are simply told:

"If the Contract Clause means anything at all, it means that the state cannot prohibit drilling and then cancel its

---

[6] The Supreme Court sustained this finding. (App A, A2-3).

[7] Although the diagram purports to be on a scale of one inch equaling one mile, each one mile side of the township sections are only 3/4 of an inch in the diagram.

lease as it has tried to do to Michigan Oil Company in the instant case." Petition, p 20.

The Court of Appeals stated:

> "The best that can be said for appellant's argument is that it confuses the constitutional prohibition against the state enacting laws impairing the obligations of contracts with the state allegedly breaching a contract to which it is a party. It has long been recognized that mere breach of contract by a governmental entity does not constitute an unconstitutional impairment of a contractual obligation. . . . *Shawnee Sewerage & Drainage Co* v *Stearns*, 220 US 462 . . . (1911).
>
> Furthermore, as noted previously, this lease did not necessarily contemplate that the Supervisor of Wells and the Natural Resources Commission would be required, under any and all circumstances, to issue a drilling permit to the lessee. The commission, by entering into this lease, did not and could not deprive itself of its statutory duty to prevent waste or destruction of the state's resources under its control. . . ." (App A, A70-71).

D. Michigan Oil Was Not Denied Due Process When The Natural Resources Commission Ruled That Unnecessary Damage Under the Michigan Oil Conservation Act Indeed Included Unnecessary Damage to the Environment.

Lastly, Michigan Oil contends that it had "no notice" that the Oil Conservation Act prohibited unnecessary damage to the environment and, thus, was denied due process:

> "Petitioner had no such notice here. At the time of the evidentiary hearing, the sole issue in the case was whether as a result of the drilling, there would be 'unnecessary' damage within the meaning of the Oil Conservation Act. Petitioner's evidence was designed to meet this claim and the hearing examiner, based on that statute* and Opinion 4718 of the Michigan Attorney General, held that 'drilling and producing operations carried on in a careful and prudent manner and in keeping with applicable rules and regulations cannot be unnecessary damages since these activities are required to accomplish the legitimate drilling and producing objective.' Relying on this legal position which was the issue framed by the parties for the evidentiary hearing, Petitioner did not introduce any rebuttal evidence on the harm to the ecology, (elk, bear and bobcat) claimed by the DNR and intervenor." Petition, p 24-25.

Reduced to its essentials, Michigan Oil's argument is that to its detriment, it relied upon Michigan Attorney General Opinion 4718 and was, thus, unconstitutionally lulled into presenting no rebuttal testimony to the state's evidence establishing damage to wildlife and the environment.[8]

Michigan Oil's attack is without foundation. Opinion 4718 provided broad legal responses to broad questions of legal policy.[9] What constitutes "unnecessary waste or destruction" is, by its very nature, determined by the facts of each particular permit application. The Opinion concluded:

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[8]

Surely, Petitioner Michigan Oil is not claiming that it had detrimentally relied *at the contested case* hearings on a ruling by the hearing examiner in his Conclusions of Law issued more than seven and one half months after the close of the contested case hearings.

[9]

Opinion 4718 was issued one year before Michigan Oil's application to drill on Corwith 1-22 and two years before the contested administrative hearings.

"To the extent, however, that the applicant can effectively drill for and produce oil and gas from state leased land *without causing unnecessary damage to or destruction of the surface, soils, animal, fish or aquatic life, or unreasonably molesting, spoiling or destroying state owned land.* said applicant cannot be denied a permit to drill thereon." (Emphasis added) OAG, 1971-1972, No. 4718, p 28 (April 6, 1971).

In this matter, the Attorney General, representing the Department of Natural Resources, left no doubt on its specific legal position before the administrative hearings began:

"4. Separate the issues as to law and fact, and state the desired order of trial of said issues.

Does Act 61 of P.A. of 1939 authorize the supervisor to deny an application for a permit to drill a well where the record indicates that unnecessary damage or destruction may be committed to the soils, animal, fish or aquatic life or property (including natural resources)? Legal issue.

Will the drilling of a well at the location specified in the application of the Michigan Oil Company cause unnecessary damage to animals, fish, aquatic values or property (including natural resources)? Factual issue.

The factual issue should be tried first." DNR December 21, 1972 Pretrial Statement to Hearing Examiner.

The whole point of the administrative hearing was, of course, Michigan Oil's challenge to Supervisor's July 21, 1972 denial of the second Corwith 1-22 application, which stated:

"Oil and gas operations at the above site cannot be conducted without causing or threatening to cause serious damage to animal life and molesting or spoiling state-owned lands. •••

The proposed drilling site is located in a 40-acre tract within a township about 93 percent state owned and hence almost entirely in a wild state. Similar conditions prevail in the townships to the north and south. This surrounding area is primitive in nature, largely wooded, with minimal development. The roads are narrow, winding, and highly scenic. *The proposed site is near the center of the Michigan elk range. The area has substantial populations of game—white-tailed deer, ruffed grouse, and woodcock, and relict populations of wildlife requiring extensive little-disturbed, wild areas such as black bears, bobcats, bald eagles, pileated woodpeckers, and ravens. All of the latter are scarce or very local in occurrence in the Lower Peninsula.* . . . (Emphasis added.)" (App A, A4, A5).

The truth of the matter is that Michigan Oil has unsuccessfully pursued its view of the Michigan Oil Conservation Act before the Natural Resources Commission, the Ingham Circuit Court, the Michigan Court of Appeals, and the Michigan Supreme Court. Michigan Oil, while alleging a violation of procedural due process, now asks this Court to impose its legal interpretation of the Michigan act on the State of Michigan. Michigan Oil's request should be denied.

CONCLUSION

Respondents Natural Resources Commission and Supervisor of Wells urge that this Court deny Michigan Oil's Petition for Writ of Certiorari to the Supreme Court of the State of Michigan.

Respectfully submitted,

FRANK J. KELLEY
Attorney General for the
State of Michigan

Robert A. Derengoski
Solicitor General

Stewart H. Freeman
Thomas F. Schimpf
Assistant Attorneys General

Attorneys for Respondents
Natural Resources Commission and
Supervisor of Wells

Business Address:

The Law Building
525 West Ottawa
Lansing, MI 48913
(517) 373-1124

Dated: OCT 22 1979

APPENDIX

5/May, 1978

STATE OF MICHIGAN

SUPREME COURT

MICHIGAN OIL COMPANY, A Michigan Corporation, Petitioner-Appellant, v NATURAL RESOURCES COMMISSION and SUPERVISOR OF WELLS, Defendant-Appellees, and PIGEON RIVER COUNTRY ASSOCIATION, Intervenor-Appellee	No. 59088

BEFORE THE ENTIRE BENCH

KAVANAGH, J (To affirm)

I would affirm the Court of Appeals.

I cannot subscribe to a construction of the Oil Conservation Act which would limit the DNR's duty to protect the whole environment as it is affected by the drilling of oil wells.

There is adequate evidentiary support for the Commission's determination that drilling the proposed well would result in damage to animal life.

Its conclusion that this amounts to the waste included in the proscription of the statute comports with my understanding of the legislative intent in writing this law. While it is true the express, primary concern of the Oil Conservation Act is with the prevention of waste of oil itself, I cannot read the Act as ignoring, let alone approving, all incidental damage to other natural resources.

Thomas Giles Kavanagh /s/